IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 418 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISHCHANDRA BHARATSINH PUWAR

Versus

BALDEVSINH KALUSINH CHAUHAN

Appearance:

1. Criminal Revision Application No. 418 of 2000

MR HIMANSU M PADHYA for Petitioner No. 1

MR DC SEJPAL for Respondent No. 1

PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/01/2002

ORAL JUDGEMENT

#. The present petitioner has filed this Criminal Revision Application Under Section 397 read with 401 of the Criminal Procedure Code, 1973, challenging the order

of the learned Additional Sessions Judge, Sabarkantha at Himmatnagar dated 29.6.2000 in Criminal Revision Application No.12/2000.

#. The facts may be briefly stated as follows :-

#. The present petitioner had submitted an application before the trial Court i.e. the Court of learned JMFC Modasa in M-Case No.7/1999 for the custody of the muddamal vehicle. The said application Ex.19 was allowed by the trial Court and the trial Court had directed that the muddamal Jeep be entrusted to the petitioner on his furnishing personal bond and security in a sum of Rs.1,35,000/-. The said order was passed on 28.1.2000.

#. At the same time the contesting respondent No.1 had filed another application Ex.16 for the similar relief. The said application was dismissed by the trial Court.

#. Feeling aggrieved by this order, the contesting respondent preferred Criminal Revision Application No.12/2000 before the Sessions Court, Sabarkantha at Himmatnagar. After hearing the parties the learned Additional Sessions Judge passed an order on 29.6.2000 setting aside the order dated 28.1.2000 passed below Ex.16 and Ex.19 by the trial Court and allowed Revision Application.

#. Feeling aggrieved by the said order the petitioner original complainant has preferred this Revision Application before this Court. It has been mainly contended here that the petitioner was in actual possession of the muddamal vehicle and, therefore, the trial Court was justified in not handing over the possession of the Jeep, pending and final disposal of the Criminal Case. It is therefore contended that the Sessions Court has committed illegality in allowing the Revision Application and directing that the possession be handed over to the contesting respondent.

#. It is, therefore, prayed that the present Revision Application be allowed and the above order of the Sessions Court be set aside. On receiving this Revision Application notice was issued at the first instance and rule was issued thereafter. In response to the service of rule learned advocate Mr.D.C.Sejpal appears for respondent No.1 and learned APP Mr.B.D.Desai, for respondent No.2.

#. I have heard the learned advocate for the parties and have perused the papers. It appears that according to

the case of the present petitioner he has made payment of the amount of Rs.21,101/- in favour of contesting respondent. However, so far the first payment of Rs.101/- and Rs.11,000/- is concerned prima facie there is no material to substantiate the case of the petitioner.

#. So far Rs.11,000/- are concerned the defence is that the petitioner had borrowed that amount from the contesting respondent and, therefore, the cheque was issued. We are not very much concerned with that aspect of the case.

##. At the same time it is an admitted position that the vehicle in question stands in the name of contesting respondent at present. Even in the past also the said vehicle stood in the name of contesting respondent. The said vehicle has never been transferred in the name of the petitioner, no application appears to have been made for transferring the said vehicle in the name of the petitioner. This means that the contesting respondent was and is, the registered owner of the said vehicle and, therefore, prima facie the vehicle should go to the contesting respondent.

##. To show that the petitioner has made payment of an amount of Rs.21,101/- in full to the contesting respondent, there is no material on record. Further there is no prima faice evidence to show that the said amount was paid as a consideration of sale and purchase of the said vehicle between the petitioner and contesting respondent. The contract does not appear to be in writing. There is no further material to substantiate oral contract. In that view of the matter, the learned Additional Sessions Judge cannot be said to have committed any illegality in allowing the Revision Application by relying upon the decision of this Court in the case of Nandiram alias Nandumal Parumal vs. State of Gujarat, reported in 1966 G.L.R. P.866 wherein this Court has considered the provision of Motor Vehicles Act for the purpose of deciding the prima facie custody of motor vehicle.

##. In that view of the matter, the order of the Sessions Court is not found to be illegal. Therefore, it is not possible for this Court to interfere with the same. It is well known that the powers, functions and jurisdiction of this Court while exercising revisional powers are limited and in that view of the matter it is not permissible for this Court to interfere with the order of the Sessions Court.

##. For the foregoing reasons this Revision Application is without any merit and deserves to be dismissed. Accordingly, this Revision Application is dismissed. Rule is discharged.

(D. P. BUCH, J.)

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